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Written statement* submitted by the Commonwealth Human Rights Initiative, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Promoting reconciliation and accountability in Sri Lanka: The need for an international commission of inquiry

The Commonwealth Human Rights Initiative (CHRI) recognises and welcomes the recent progress towards reconciliation made by the government of Sri Lanka. It has held elections for a semi-autonomous council in its Tamil majority Northern Province, taken steps towards re-integrating internally displaced persons and made progress in improving services such as electricity and water supplies. Nonetheless, much remains to be done when it comes to investigating allegations of international human rights and humanitarian law violations that occurred during Sri Lanka's prolonged internal armed conflict.

Nearly five years after the end of the conflict, assurances by the Government to make progress on accountability remain unmet and victims of war crimes continue to wait for justice. CHRI shares the concerns of the United Nations High Commissioner for Human Rights (UN High Commissioner) regarding the lack of an effective effort on the part of the Government of Sri Lanka to independently investigate allegations of war crimes. As the UN High Commissioner told the Human Rights Council in September 2013, the Government has made "no new or comprehensive effort to independently or credibly investigate the allegations [of] violations of international human rights law and international humanitarian law". The UN High Commissioner thus encouraged the Government to show a credible national process with tangible results before March 2014. Till date, the Sri Lankan Government has made no authentic progress on justice and accountability. Sri Lanka has been given numerous opportunities to instigate an effective domestic process towards accountability, but to no avail. Neither are there any indicators to suggest that progress is imminent. Therefore, as a method of last resort, CHRI urges the international community to establish an international commission of inquiry to investigate allegations of war crimes committed by both sides at the end of Sri Lanka's internal armed conflict.

Over the years Sri Lanka has instituted numerous inquiry mechanisms all of which have failed to effectively deliver justice to victims of human rights abuses. Most recently, the Government postponed its launch of a National Inquiry into Torture, citing that it was not the right time to hold such an inquiry given that the Human Rights Commission of Sri Lanka is taking steps towards reconciliation. However, it remains unclear what, if any, measures are being undertaken by the Human Rights Commission whose members' independence is the subject of criticism as a result of being directly appointed by the President.

Just six months earlier on August 15 2013 the President established a Presidential Commission of Inquiry to look into disappearances in Sri Lanka. This commission received criticism from several quarters for its serious investigative flaws. Most notably, it has been alleged that Ministry of Defence officials attend hearings and military personnel carry out duties of the commission. Ministry of Defence involvement is problematic because several allegations of enforced disappearances point directly to military involvement. Military presence during the inquiry process therefore affects the perception of independence and creates a hostile environment in which to give testimony. Accordingly, expectations for this Commission's effectiveness remain low, much like the previous five commissions of its kind whose recommendations were not published and have never been fully implemented.

The Lessons Learnt and Reconciliation Commission (LLRC), one of the only commissions to publish its findings and recommendations also received significant criticism due to its limited scope (wherein it could not investigate alleged war crimes); lack of witness protection measures, partiality of some of its members and lack of implementation of its recommendations. Given the limited mandate of the LLRC, even if more time is given to see its recommendations implemented, this will not address the need for accountability for war crimes.

Sri Lanka has instituted several investigative and inquiry commissions since the end of its civil war, all of which have been subject to criticism. Accusations have related to lack of impartiality, the appointment processes, lack of proper and effective witness protection measures and because more often that not their findings go unpublished and abandoned. Given Sri Lanka's track record and failure to recognise or respond to criticism, a Government inquiry is not a realistic prospect for ensuring credible investigations and accountability in Sri Lanka. The Sri Lankan government has shown no credible political will to discover the truth behind events occurring at the end of the conflict or to hold to account those responsible for abuses.

Moreover, the lack of an independent judiciary in Sri Lanka is a further impediment to effective future investigations into war crimes and human rights violations. In January 2013, the Chief Justice of Sri Lanka was impeached. The illegality of the impeachment was confirmed by the country's own Supreme Court and in a leaked legal opinion by an international expert appointed by the Commonwealth Secretary-General. Nonetheless, this impeachment decision has not been reconsidered.

The Sri Lankan Government has failed to accept offers of assistance from the UN High Commissioner regarding accountability. For instance, the UN High Commissioner made clear that her office would be willing to assist with resolving pending cases of disappearances and facilitate efficient sharing of information. The High commissioner also encouraged the government to engage with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to give advice on a national reparations policy in accordance with international standards. So far, the Government of Sri Lanka has not implemented, or shown willingness to implement, any of these suggestions, bringing into question the Government's commitment to accountability.

Additionally, the government has demonstrated resistance to international cooperation, assistance and oversight in the areas of justice and accountability. Despite the Government's assertion that it is open to international oversight it has not issued an open invitation to the UN special procedure mandate holders and has prevented mandate holders in the past from visiting the country. A recent example of this is when an international delegation that included the UN Special Rapporteur on the Independence of Judges and Lawyers had their visas revoked in November 2013, causing an event co-hosted by the International Bar Association's Human Rights Institute and the Bar Association of Sri Lanka to be cancelled. In the same month, protestors were prevented by the riot police from accessing the UK Prime Minister during his tour of the Northern Province and the Australian Senator Lee Rhiannon and New Zealand MP Jan Logie who wanted to engage in a fact finding mission on human rights violations were accused of violating their visa regulations and quickly deported.

CHRI is of the view that genuine reconciliation is not possible unless there is credible accountability for previous violations of international humanitarian and human rights laws. The Sri Lankan government's failure to convincingly address allegations of war crimes, or implement a meaningful process of accountability over the last five years signifies that the time has come for the international community to step in. Recognising that only an independent investigation can deliver justice to the thousands of victims of Sri Lanka's brutal conflict CHRI urges the members of the Human Rights council to support a resolution establishing a credible, transparent and independent international inquiry into the allegations of war crimes during the final stages of the Sri Lankan armed conflict.